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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0730; FRL- 9620-9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Consumer and Commercial Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The SIP revision adds a new chapter (9VAC5-45 – Consumer and Commercial Products) in order to control volatile organic compounds (VOC) from portable fuel containers, consumer products, architectural and industrial (AIM) coatings, adhesives and sealants, and asphalt paving operations within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The SIP revision also includes new and revised documents incorporated by reference into the Virginia regulations (9VAC5-20-21 – Documents Incorporated by Reference) in order to support the new and revised regulations. This action is being taken under the Clean Air Act (CAA).

DATES: Effective Date: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0730**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted

by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 2011 (76 FR 69214), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of Virginia's consumer and commercial products regulations. The formal SIP revision was submitted by the Commonwealth of Virginia on March 18, 2010.

II. Summary of SIP Revision

The SIP revision consists of the following: (1) amendments to Chapter 9VAC5-20-21 – Documents Incorporated by Reference, in order to make administrative changes for clarity, style, format, renumbering, and incorporate by reference into the Virginia regulations the new and

revised regulations; (2) adds a new chapter, 9VAC5-45 - Consumer and Commercial Products (Chapter 45) for regulations pertaining to consumer and commercial products; (3) adds special provisions in Chapter 45 that specify monitoring, compliance, notification, general testing, recordkeeping and reporting requirements; (4) establishes standards for portable fuel containers for products manufactured before and after August 1, 2010; (5) establishes standards for consumer products for products manufactured before and after August 1, 2010; (6) establishes standards for architectural and industrial maintenance coatings; (7) establishes standards for adhesives and sealants; and (8) establishes standards for asphalt paving operations. These SIP revisions contain the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions. The Commonwealth of Virginia has adopted the standards and requirements of the consumer and commercial products regulations as recommended by the Ozone Transport Commission model rule. Other specific requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a

voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information

to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the consumer and commercial products regulations as a revision to the Virginia SIP. This SIP revision will control emissions of VOCs, which will reduce the formation of ozone, and thereby protect public health and welfare.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in

the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Virginia's consumer and commercial products regulations, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

January 4, 2012
Dated:

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR Part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV - Virginia

2. In § 52.2420, the table in paragraph (c) is amended by adding a new Chapter 45 in numerical order and the table in paragraph (e) is amended by adding an entry for Documents Incorporated by Reference to the end of the table. The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * * *	* * *			
9VAC5, Chapter 45	Consumer and Commercial Products (applicable to the Northern Virginia and Fredericksburg VOC Emissions Control Areas)			
Part I	Special Provisions			
5-45-10	Applicability	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-20	Compliance	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5-45-30	Emission testing	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-40	Monitoring	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-50	Notification, records and reporting	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
Part II	Emission Standards			
Article 1	Emission Standards For Portable Fuel Containers And Spouts Manufactured Before August 1, 2010			
5-45-60	Applicability	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-70	Exemptions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-80	Definitions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-90	Standard for volatile organic compounds	3/17/10	[Insert Federal Register	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>publication date</u>] [Insert page number where the document begins]	
5-45-100	Administrative requirements	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-110	Compliance	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-120	Compliance schedules	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-130	Test methods and procedures	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-140	Monitoring	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-150	Notification, records and reporting	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
Article 2	Emission Standards For Portable Fuel Containers And Spouts Manufactured On Or After August 1, 2010			
5-45-160	Applicability	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-170	Exemptions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-180	Definitions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-190	Standard for volatile organic compounds	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-200	Certification procedures	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-210	Innovative products	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-220	Administrative requirements	3/17/10	[Insert Federal Register publication date]	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>date</u>] <u>[Insert page number where the document begins]</u>	
5-45-230	Compliance	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-240	Compliance schedules	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-250	Test methods and procedures	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-260	Monitoring	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-270	Notification, records and reporting	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
Article 3	Emission Standards For Consumer Products Manufactured Before August 1, 2010			
5-45-280	Applicability	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the</u>	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>document begins]</u>	
5-45-290	Exemptions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-300	Definitions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-310 (Except subsection B)	Standard for volatile organic compounds	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-320	Alternative control plan (ACP) for consumer products	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-330	Innovative products	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-340	Administrative requirements	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-350	Compliance	3/17/10	[Insert Federal Register publication date] [Insert	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>page number where the document begins]</u>	
5-45-360	Compliance schedules	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-370	Test methods and procedures	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-380	Monitoring	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-390	Notification, records and reporting	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
Article 4	Emission Standards For Consumer Products Manufactured On or After August 1, 2010			
5-45-400	Applicability	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-410	Exemptions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>begins]</u>	
5-45-420	Definitions	3/17/10	<u>[Insert Federal Register publication date] [Insert page number where the document begins]</u>	Added.
5-45-430 (Except subsection B)	Standard for volatile organic compounds	3/17/10	<u>[Insert Federal Register publication date] [Insert page number where the document begins]</u>	Added.
5-45-440	Alternative control plan (ACP) for consumer products	3/17/10	<u>[Insert Federal Register publication date] [Insert page number where the document begins]</u>	Added.
5-45-450	Innovative products	3/17/10	<u>[Insert Federal Register publication date] [Insert page number where the document begins]</u>	Added.
5-45-460	Administrative requirements	3/17/10	<u>[Insert Federal Register publication date] [Insert page number where the document begins]</u>	Added.
5-45-470	Compliance	3/17/10	<u>[Insert Federal Register publication date] [Insert page number where the document begins]</u>	Added.
5-45-480	Compliance schedules	3/17/10	<u>[Insert Federal Register publication date] [Insert page number</u>	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>where the document begins]</u>	
5-45-490	Test methods and procedures	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-500	Monitoring	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-510	Notification, records and reporting	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
Article 5	Emission Standards For Architectural And Industrial Maintenance Coatings			
5-45-520	Applicability	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-530	Exemptions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-540	Definitions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-550	Standard for volatile organic	3/17/10	[Insert Federal	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
	compounds		<u>Register publication date</u> [<u>Insert page number where the document begins</u>]	
5-45-560	Administrative requirements	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-570	Compliance	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-580	Compliance schedules	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-590	Test methods and procedures	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-600	Monitoring	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-610	Notification, records and reporting	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document</u>	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>begins]</u>	
Article 6	Emission Standards For Adhesives And Sealants			
5-45-620	Applicability	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-630	Exemptions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-640	Definitions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-650	Standard for volatile organic compounds	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-660	Control technology guidelines	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-670	Standard for visible emissions	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-680	Administrative requirements	3/17/10	[Insert Federal Register publication	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>date</u>] <u>[Insert page number where the document begins]</u>	
5-45-690	Compliance	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-700	Compliance schedules	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-710	Test methods and procedures	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-720	Monitoring	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-730	Notification, records and reporting	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-740	Registration	3/17/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Added.
5-45-750	Facility and control equipment	3/17/10	<u>[Insert Federal</u>	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
	maintenance or malfunction		<u>Register publication date</u> [<u>Insert page number where the document begins</u>]	
Article 7	Emission Standards For Asphalt Paving Operations			
5-45-760	Applicability	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-770	Definitions	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-780	Standard for volatile organic compounds	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-790	Standard for visible emissions	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-800	Standard for fugitive dust/emissions	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the document begins</u>]	Added.
5-45-820	Compliance	3/17/10	[<u>Insert Federal Register publication date</u>] [<u>Insert page number where the</u>	Added.

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>document begins]</u>	
5-45-830	Test methods and procedures	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-840	Monitoring	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
5-45-850	Notification, records and reporting	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added.
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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional Explanation
* * * * *	* *			
Documents Incorporated by Reference (9 VAC 5-20-21, Sections E.1.a.(2), (16)-(19), E.2.a.(3), E.2.b., E.4.a.(23)-(27), E.11.a.(4)-(6), E.12.a.(3), (5) and (9)-(11))	Northern Virginia and Fredericksburg VOC Emissions Control Areas	3/17/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Added section.

[FR Doc. 2012-1339 Filed 01/25/2012 at 8:45 am; Publication Date: 01/26/2012]